

WALPOLE PLANNING BOARD MINUTES OF APRIL 16, 2015

A regular meeting of the Walpole Planning Board was held on Thursday, April 16, 2015 at 7:00 p.m. in the Main Meeting Room, Town Hall. The following members were present: John Conroy, Chairman; Richard Mazzocca, Vice Chairman; John Murtagh, Clerk (7:09 p.m.); Edward Forsberg, Richard Nottebart, Margaret Walker, Town Engineer; and, Elizabeth Dennehy, Economic Development Director.

Minutes: Mr. Conroy moved to approve the minutes of April 2, 2015. Motion seconded by Mr. Nottebart and voted 4-0-0.

ANR – O'Donnell, 343 Fisher Street: Mr. Conroy moved to endorse an ANR plan of land entitled "Subdivision Plan of Land in Walpole, MA" dated January 19, 2015 by Glossa Engineering finding Form A in order and subdivision control not required. Motion seconded by Mr. Nottbart and voted 4-0-0. It was noted that the purpose of this plan is to divide the existing lot into Lot 1 and Parcel 1. The owners/applicants are Jeffrey and Ann O'Donnell, 343 Fisher Street, Walpole. Said property is shown as Assessors Map 13, Lot 18, zoning district Residential A.

Mr. Murtagh arrived at 7:09 p.m.

Kingswood Estates: Mr. Conroy moved to accept an extension of time up to and including July 31, 2015 as per a request from the applicant's attorney, Gerald Blair. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy continued the hearing to July 16, 2015 as requested by Atty. Blair.

7:15 p.m. Commerford's Corner Subdivision: Peter Commerford asked the board to remove the condition in his subdivision approval regarding the moving of the NSTAR poles. He had previously asked the Selectmen to go to NSTAR and they didn't want to get involved. The town widened the roadway to approximately 26' wide, so the situation is not the same as it was. He wants to complete the subdivision. Ms. Walker agrees with Mr. Commerford. The poles were originally going to be moved because of the curb and the narrow roadway. Once the curve was flattened and the road widened there was no reason to move the poles. Mr. Conroy asked if the poles are no longer an issue and Ms. Walker stated not any more. NSTAR said no to moving them and the Selectmen don't want to get involved. Mr. Mazzocca stated that obviously there is no need now to move them and he doesn't think the condition can possibly be met. Mr. Commerford doesn't own the poles and he can't force the owner to do anything. Ms. Walker stated if they needed to be moved they would have worked with NSTAR. Mr. Forsberg agrees they don't have to be moved, but there are others on this street that do. He feels this should have been resolved beforehand and that the Building Inspector should have come back to us. He would like us to send a letter to the Zoning Enforcement Officer as he has to enforce what we vote on. Special Condition #16 stated that there would be no occupancy permit until the poles were relocated. We approved this as a special condition and then it was ignored for one reason or another. Mr. Nottebart asked if there was any resistance from the Building Department regarding occupancy permits. Mr. Commerford stated that Dorothy Commerford's house was in existence before this decision was made and had an occupancy permit. Ms. Dennehy stated that going forward she has been in communication with the new building commissioner. Mr. Nottebart asked if she is saying we don't need to write a letter. Ms. Dennehy stated that between the new building commissioner and

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herself it should make a difference. Mr. Murtagh agrees with Mr. Mazzocca. Mr. Forsberg feels we need to do something. Ms. Dennehy stated the board can vote to strike the condition. Mr. Conroy stated the applicant should ask that it be stricken as that condition is impossible to meet. If it is under Mrs. Commerford's name, either she or her Power of Attorney should make the request. If it is the POA, we need something on record stating who is the POA.

Mr. Mazzocca moved that Condition #16 in the Commerford Corner subdivision decision be stricken. Motion seconded by Mr. Nottebart and voted 5-0-0. Ms. Dennehy stated we should print out a new decision showing the original and amended dates. Mr. Conroy stated Mr. Commerford will probably want to record this.

7:30 p.m. Open Space Residential Development Special Permit: Mr. Conroy opened the hearing. He stated this hearing was originally scheduled for March 19, but it was continued without testimony until tonight. He read the public hearing notice. The applicant was represented by Atty. Vincent O'Brien, Michael Viano, Sean McEntee, and John Glossa. Mr. Conroy explained the process. He stated that MEPA has no effect on us or us on them. Atty. O'Brien and John Glossa presented a short overview of the project. Atty. O'Brien stated they meet or exceed all the requirements of the local bylaw and there will be no affordable units. Ms. Dennehy addressed her comments. She stated one of her questions is relative to the conventional yield plan and questioned the two lots that are already existing, Lots C and D. She doesn't think it is realistic to include them in the lot count and has never seen that before. She would like a further explanation. She stated that the Conservation Commission did issue an ORAD, but nothing else as it pertains to the conventional plan. With a project of this size and the Conservation restrictions that come into play, she feels there should be a consultant on board. Atty. O'Brien stated the town did hire a consultant, Wayne Feiden. Mr. Nottebart stated he was working as our planner. We want a peer review that is paid for by the applicant. Ms. Walker spoke to her comments and stated she has the same concerns as Ms. Dennehy. She referenced a letter dated February 18, 2015 about certain parcels not being available to the public. She asked if we are dealing with waivers now or during the conventional plan process. Atty. O'Brien stated that it was suggested by Wayne Feiden that they develop a different type of drainage system. Ms. Walker stated the next step is to meet with DPW to make sure what is being proposed will fly.

Mr. Conroy read correspondence from Zoning Board, Sewer and Water, Police, Fire, Health Board, Conservation, E911. Atty. O'Brien stated they met with the Conservation Commission on September 24, 2014 and then the Planning Board on December 18 at which time there were two ConCom members present. At that time, the two Conservation Commission members didn't see a problem with the wetland crossings. Then, they met with the Conservation Commission and revised the plan. Mr. Conroy stated that this is a new plan before us and needs to be treated as a new filing.

Jack Wiley, Chairman of the Conservation Commission stated there has been no formal presentation to the Conservation Commission on either the conventional plan or the revised open space plan. They did meet with them informally, but there was no formal presentation. Atty. O'Brien stated doesn't think

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there will be a formal filing. Mr. Wiley stated that in order to determine the buildable lots, he thinks there should be a presentation to decide what is buildable.

Atty. O'Brien stated the board's rules and regulations don't say they need to meet with the ConCom. Mr. Conroy stated it says you need to show us how you can build this conventionally without any issues. Atty. O'Brien stated he has no problem meeting with them informally but there will be no formal filing. They are not seeking subdivision approval; they are asking if this concept works. Mr. Conroy stated open space is an alternate method to the conventional. Atty. O'Brien stated he doesn't anticipate a formal filing. Mr. Mazzocca stated whether you file formally or not, we will depend on the Conservation Commission for input. We will do whatever they say. Mr. Forsberg asked if they are just looking to get the concept approved and we don't have to decide on the lot count and Atty. O'Brien stated they have to come back with waivers and a plan. If the board says they don't like this, it will go away and they will come back with a conventional plan with waivers. Mr. Forsberg stated he is in favor of the concept but feels we need to get the lot count straightened out. He has concerns with the actual subdivision approval. He feels we need input on the lot count from all the departments and also we need a peer review. Atty. O'Brien thought Ms. Walker looked at that. Mr. Forsberg stated we need the yield and lot count verified. Mr. Nottebart stated nothing has changed in his head from before. Why is there a reluctance to get the yield plan? He agrees with a peer review. He talked to Mr. Feiden and town counsel himself. Atty. O'Brien stated you have everything your bylaw requires. Mr. Nottebart doesn't disagree with that. Atty. O'Brien feels the board should compare this with the ORAD and the board's rules and regulations and the zoning bylaw. Everything that is required is here. Mr. Nottebart asked if it is on the open space plan and Atty. O'Brien stated no, that is on the conventional plan. Mr. Nottebart feels this is smoking mirrors. Atty. O'Brien takes offense to that statement. Mr. Nottebart asked how can you discuss the conventional plan if you haven't been to the Conservation Commission? When you withdrew without prejudice on February 5, 2015, he thought there would be more breathing room, but you filed the following Monday. He wants to have a peer review with an expert to guide us. He can't debate our bylaw right now. He feels our hands are tied and is afraid we will be trapped. He is uncomfortable. Atty. O'Brien stated he doesn't want him to be uncomfortable. He thought he gave the board everything they need. There are no smoking mirrors. They have presented the plans and met with Margaret Walker. Their goal is to be as open as possible. If there is something missing, he wants to know. He would be happy to sit with Mr. Nottebart for a couple of hours. Mr. Nottbart stated he would prefer him to sit with the peer review person. He also is questioning the houses on North Street. Atty. O'Brien stated he will defer to Mr. Feiden if he agrees with this. Ms. Dennehy stated she has never seen this before and is not sure it is reasonable. Mr. McEntee asked to go back to the yield plan. They had Mr. Glossa's draft person meet with Margaret Walker and went over it lot by lot. They have been fully transparent with a significant amount of review. Mr. Nottebart stated that is not ConCom. He asked Ms. Walker if she remembers that and she stated they just reviewed to see if the circles fit.

Mr. Murtagh stated the green cards in order and have all been returned.

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Mr. Murtagh stated he likes the concept and agrees with Mr. Forsberg and feels we need input from the Conservation Commission and also the DPW. Atty. O'Brien stated that will be their next step. Mr. Conroy read a letter from Carolyn Cofsky in support of the open space proposal and also comments from Wayne Feiden dated March 3. He had some issues, one of which is the wetlands and also the waiver for a dead end street. Ms. Dennehy questioned Lots C and D and moving the house. Mr. Conroy feels we should ask town counsel as we want to make sure what we do is correct and reasonable. Atty. O'Brien asked if it would be appropriate to communicate with town counsel regarding her opinion. Mr. Conroy stated we always get her opinion right before a meeting and we would want to see it first. The ad indicated Parcel A but Atty. O'Brien's letter said there is no Parcel A. Mr. Nottebart asked if the lot count is right and Mr. Conroy stated they said there are 37 lots. Atty. O'Brien stated that is correct. Mr. Conroy asked how we can give waivers to something that is part of the lot count. He will ask town counsel to comment on that also. He explained the open space concept. He stated we can approve this for 37 lots or something less. We are just addressing the concept tonight. The plan lets them build 37 houses on smaller lots. Again, he will send this to town counsel. Because we need answers from town counsel and ConCom and also need to have a peer review done, this hearing would need to be continued. If this is denied, they have the right to build a conventional plan by going through the process. The abutters would be re-noticed if the conventional plan is filed.

Phil Sanford, North Street doesn't feel that is an option after reading the zoning bylaw. They didn't go to the ConCom. The neighbors are upset because there are too many houses on small lots. He thinks they should start at the beginning and do things right. Atty. O'Brien stated they have been doing this right. Mr. Sanford stated that according to the bylaw, the open space lots are supposed to be contiguous. Atty. O'Brien stated they are contiguous. Mr. Sanford stated Parcel D is not. Mr. Viano stated Parcel D is the entire parcel with 33 smaller lots. Roadway E separates Parcel A from Parcel B. Mr. Conroy stated the point that Mr. Sanford raises is part of what we are asking town counsel. Mr. Glossa stated we can make you a plan that shows the contiguous land. He will do it as a supplemental sheet and get it to the neighbors and board.

Mark Murray, 7 Pheasant Hill Street thinks the lot count needs to be right. One of the open space challenges is more than half will be fenced off and reserved for equestrian use. Therefore, the majority of the land will not be accessible. Mr. Conroy believes that is correct. Mr. Viano stated the bylaw allows for open space parcels to be owned privately or for equestrian purposes. Mr. Conroy stated that will be part of the open space. Mr. Forsberg asked if there are restrictions on Parcel B. Mr. McEntee had printed out the horse farm parcels. Mr. Viano stated there will be a trail access from North Street and they do agree with having a bigger path. Mr. Forsberg stated no one will want someone walking through their backyard. Mr. Viano stated he would be happy to do a site visit with the board. Mr. Forsberg stated we will be going back and forth forever on the lot counts. If Lots 17, 18, and 19 were eliminated, he would vote on this right now. He will never approve a path going through someone's backyard. Thirty-four lots would get his vote. Mr. Viano stated this all up to the board. They have been before the board twice.

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Charles Coombs, 12 Covey Road stated they need to know how many lots are buildable and would like recommendations to come out of this meeting. He likes the site and the idea of open space but the initial question is how many buildable lots are there and are Lots C and D allowed to be considered. Mr. Conroy stated that is why we would employ a consultant and then ask for ConCom input. The biggest sticking point is the lot count. There is no guarantee that what we see on the plan will be the final thing. Mr. Sanford stated there are elements of this that are very appealing. Mr. Coombs reminded the board of a letter written by Joe Moraski a couple of weeks ago.

Suzanne Green, Fisher Street stated she rented property on Fisher Street for eleven years. From a personal perspective there are boundary issues with regard to vernal pools and boundary lines. She is also the superintendent and director of the Norfolk County Agricultural School and is here tonight in that role also. She wants to make sure that the migratory wild life that utilizes that corridor still have access and that the wetland and drainage doesn't have an impact on the school. We would like more information regarding the impact on her students. Mr. Conroy stated that would be under the jurisdiction of the Conservation Commission. Ms. Green stated she has the utmost confidence in the Conservation Commission, but needs to be able to make her own assessment. Mr. Conroy asked the involvement of the Army Corp. of Engineers and Mr. Glossa stated they are involved at this level because we are crossing a wetland with a vernal pool and there will be land disturbance. He stated she will be noticed when an NOI is filed.

Mr. Coombs stated that at the start of the meeting you said MEPA has nothing to do with this. Mr. Conroy stated MEPA doesn't affect us nor does the Army Corp. of Engineers. Atty. O'Brien stated the Planning Board can approve this but if MEPA says no, this won't go forward.

Fran Wallach, an abutter, stated you run separately but you are not approving something without MEPA? Mr. Conroy stated no. Mr. Wallach stated it would be beneficial to have everything right in a row. The Planning Board is the final approval. Mr. Conroy stated we are not the final approval. Mr. Wallach stated if you know they need other approvals, why don't you wait for all of them to be granted. It seems like the people are being shuffled all over the place. Mr. Conroy stated all we care about is the roadway layout and lot count. Everyone has a different piece of the pie. ConCom cares about the wetlands. If we close and vote this and the Army Corp. of Engineers changes this, then the applicant has to refile with us. The final plan is based upon Conservation, Planning, MEPA and ACOE. It is their risk to go forward without all approvals in hand.

Brian D'Angelo, 10 Covey Road stated he is located at the extreme end of the road and in the spring the water table is quite high. What can the town do to protect the neighbors? Mr. Conroy stated nothing should change either now or in the future. Mr. D'Angelo said what if it does. Mr. Conroy stated it is done on an engineering basis. It could happen but we have never had an issue. Mr. D'Angelo asked once this is approved are you saying we have nothing to be concerned about. Mr. Conroy stated that usually you will find you will have less water, but that will be addressed at the subdivision hearing.

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Mr. Conroy stated we need an extension up to and including May 31, 2015. Atty. O'Brien agreed. Mr. Conroy moved to accept an extension of time on which to take action up to and including May 31, 2015. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy continued this hearing to May 21, 2015 at 7:30 p.m.

Mr. Nottebart moved that based on input from our planner and the board members, we would like the applicant to pay for a peer review that we will hire. Motion seconded by Mr. Forsberg. Ms. Dennehy stated she will come up with three names and three quotes. Motion voted 5-0-0.

9:20 p.m. Southridge Farm, 400 South Street, Site Plan Approval, Case No. 15-5 and Special Permit, Case No. 15-4: Mr. Conroy opened the continued public hearing and stated the two hearings will run concurrently. Mr. Forsberg moved to waive the reading of the public hearing notices. Motion seconded by Mr. Mazzocca and voted 5-0-0. The applicant was represented by Rob Truax, GLM Engineering, Holliston, MA. He stated they are here basically for a modification to an existing site plan. The previous plan only showed an office trailer before and now P.J. Hayes wants to build both a warehouse and office. He presented a rendering of what they were building. He stated they didn't change the overall area they are working in, but needed to modify the impervious cover because the building is taking up more impervious area. Nothing else is changing. Storage bins will be the same in the back and the site is encasing what was already proposed. One entrance didn't move and one moved a little. The building will have a porch on the front.

Mr. Conroy read comments from the boards and committees. Ms. Dennehy stated she talked with the building inspector and asked the board to disregard his comments as he didn't realize this was a refile. Ms. Walker and Ms. Dennehy presented their comments. Ms. Dennehy stated that everything appears to be in order.

Mr. Murtagh stated he just wants to make sure they conform to the comments presented by the fire department. Mr. Nottebart asked if the entrance on the bad curve will stay and Mr. Truax stated no, but the curve does. Also, the driveway going to Lorusso's property will stay. Mr. Nottebart asked what the special permit was for before and Ms. Dennehy stated the same as now. Mr. Forsberg stated the contractor entrance will be to the left of the building. He questioned the sight distance and the lighting on the building. Mr. Truax stated he doesn't have a detailed plan on that. Ms. Dennehy stated a condition of approval would be that the applicant needs to provide a photometric plan prior to the issuance of a building permit and also a landscape plan. Mr. Forsberg questioned the landscape plan. P.J. Hayes stated there will be some displays and it will look nice, but he doesn't have a landscape plan. Mr. Forsberg asked if there will be anything in the grass strip out front and Mr. Hayes stated yes. Mr. Conroy asked the total acreage and Mr. Hayes stated 25. Mr. Conroy asked if there was previously an ANR plan in this area and Mr. Hayes stated yes. Mr. Conroy asked if all 25 acres are incorporated into this and if both lots are under common ownership and Mr. Hayes stated yes. Mr. Conroy stated that

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since the town did the land swap, why can't the curve be straightened out? Mr. Hayes stated the swap goes back to 2008 and it never went through.

Mr. Conroy stated we can vote this and condition it or hold it open until you get everything together. If we close and anything changes, you might have to come back. Mr. Truax asked the board to close, vote and condition this. Ms. Dennehy doesn't see any issues with conditioning the decision.

Mr. Conroy moved to close the public hearings as requested. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to grant a special permit for impervious cover. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy stated the reason for granting the special permit is that it is being totally recharged and is still under the percentage of the underlying district.

Mr. Conroy moved to grant site plan approval for 400 South Street with the board's standard conditions and two special conditions as discussed. Motion seconded by Mr. Nottebart and voted 5-0-0.

9:55 p.m. Bird Machine Solar Farm Continued Hearing, Case No. 15-1: Mr. Conroy recused himself. The applicant was represented by Kevin McCaffery, New England Environmental, Amherst, MA. He stated the board requested information which he submitted including the lease agreement, de-commissioning plan, etc. He also met with Ms. Dennehy, Ms. Walker and the deputy fire chief and has responded to everyone's comments. Ms. Dennehy stated that everything has been successfully addressed with the fire department and there are no outstanding issues. She discussed her comments that are not related to the fire department. She suggested that the certificate of liability could be a special condition. She also submitted the de-commissioning estimate to the Building Inspector, Town Administrator and Town Counsel. Regarding de-commissioning, Mr. Mazzocca feels we should follow what we did for Borrego Solar. Ms. Dennehy feels we should proceed with the de-commissioning cost estimate as presented. The bylaw requires that we have surety. The applicant's consultant, Mr. Gorin stated there is a difference between their request and Borrego Solar. Also, he would like to provide a letter of credit. Ms. Dennehy stated that should be fine. Mr. Mazzocca asked the amount and Ms. Dennehy stated \$145,000, which is the actual cost to de-commission the facility, which is less than what was set for Borrego Solar. Mr. Forsberg questioned the letter of credit and Ms. Dennehy explained how that works. Mr. Forsberg asked what if this is sold and Ms. Dennehy stated letters of credit are easier to track and it should be irrevocable. Mr. Gorin stated it will be between the bank and the town.

Ms. Dennehy stated that the Conservation Commission approved this and has issued an order of conditions, which she would like referenced in our decision. Mr. Murtagh asked if we have a maintenance plan and Ms. Dennehy stated that was addressed with the fire department. We could reference the Fire Department's comments in our decision also. Mr. McCaffrey stated it is also addressed in the stormwater management plan. Mr. Forsberg questioned inflation and Ms. Dennehy stated that is accounted for in the figure.

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Mr. Mazzocca moved to close the hearing as requested by the applicant. Motion seconded by Mr. Nottebart and voted 4-0-0. Mr. Mazzocca moved to grant site plan approval to Bird Machine Solar, Case No. 15-1 with standard and special conditions. Motion seconded by Mr. Nottebart and voted 4-0-0.

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:35 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 5/7/15